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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,779	06/24/2003	Tetsujiro Kondo	450100-04609	1681

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FROMMER LAWRENCE & HAUG LLP
745 FIFTH AVENUE
NEW YORK, NY 10151

EXAMINER	
DUFFIELD, JEREMY S	
ART UNIT	**PAPER NUMBER**
2427	
MAIL DATE	**DELIVERY MODE**
12/17/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/602,779	KONDO ET AL.	
	Examiner	Art Unit	
	JEREMY DUFFIELD	2427	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 November 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11,29-38 and 55-58* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11,29-38 and 55-58* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Miscellaneous

1. Note: Examiner art unit has changed from 2623 to 2427.

Response to Arguments

2. Applicant's arguments filed 05 November 2008 have been fully considered but they are not persuasive.

In response to applicant's arguments that the given references do not teach an "estimation device for…predetermined reference level", Page 12, line 22-Page 13, line 2, the examiner respectfully disagrees. Tow teaches gathering motion information and comparing the information to a motion information template (Col. 10, lines 46-67). In this case, the gathered motion information is the claimed "movement amount" and the template contains the claimed "predetermined reference level" of a movement amount. The template contains stored motion information that includes reference motion vectors so that when new motion information is compared to the template, a particular movement action can be determined. The two-dimensional arrays of motion information can be arranged in time as a three-dimensional array of motion (Col. 9, lines 50-55). Therefore, the aforementioned limitation is disclosed by the given references.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 57 and 58 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 57 and 58 are drawn to functional descriptive material recorded on a computer-readable medium. Normally, the claim would be statutory. However, the specification does not define the claimed computer-readable medium as encompassing statutory media such as a magnetic or optical disk, CD disc, etc, so the claim language can be broadly read to be non-statutory subject matter such as a transmission signal.

A "signal" embodying functional descriptive material is neither a process nor a product (i.e., a tangible "thing") and therefore does not fall within one of the four statutory classes of § 101. Rather, "signal" is a form of energy, in the absence of any physical structure or tangible material.

Because the full scope of the claim as properly read in light of the disclosure encompasses non-statutory subject matter, the claim as a whole is non-statutory.

Any amendment to the claim should be commensurate with its corresponding disclosure.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1, 2, 4, 5, 29-34, 55-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu (US 5,550,928) in view of Tow (US 7,266,771).

Regarding claim 1, Lu teaches an audience state estimation system (Fig. 1, 3) comprising:

imaging device for imaging an audience and generating a video signal relative to the audience thus imaged (Col. 8, line 54-Col. 9, line 31);

movement amount detection device for detecting a movement amount of said audience based on said video signal, i.e. tracking a person (Col. 10, lines 6-25); and

estimation device for estimating an audience state based on said movement amount, i.e. determining who is in the area and what they are doing based on the face and body recognition along with the motion tracking (Col. 9, line 60-Col. 10, line 49; Col. 11, line 47-Col. 12, line 59; Col. 14, lines 37-65).

Lu does not clearly teach an estimation device for estimating an audience state based on a comparison result of said movement amount and a predetermined reference level.

Tow teaches an estimation device for estimating an audience state based on a comparison result of a movement amount and a predetermined reference level, i.e. using a motion information template that corresponds to clapping (Col. 10, line 46-Col. 11, line 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lu to include an estimation device for estimating an audience state based on a comparison result of said movement amount and a predetermined reference level, as taught by Tow, for the purpose of identifying a type of motion energy at a particular place in a video and presenting it to a viewer in a graphically intuitive manner (Tow-Col. 3, lines 29-35).

Regarding claim 2, Lu in view of Tow teaches the movement amount detection device determines movement information of the imaged audience based on said video signal, i.e. images are subtracted one from another to determine if motion has occurred (Lu-Col. 10, lines 6-25), and

using MPEG differential frames that store motion information in the form of motion vectors obtained by determining the difference between adjacent frames (Tow-Col. 6, lines 47-60; Col. 8, lines 14-65); and

wherein an average movement amount showing an average of magnitudes of the movement vectors is set as the movement amount (Tow-Col. 9, line 55-Col. 10, line 33).

Regarding claim 4, Lu in view of Tow teaches using a sequence of video images to track and locate a target over a time interval (Lu-Col. 12, lines 13-24); using MPEG differential frames that store motion information in the form of

motion vectors obtained by determining the difference between adjacent frames (Tow-Col. 6, lines 47-60; Col. 8, lines 14-65); and

calculating an average movement amount showing an average of magnitudes of the movement vectors (Tow-Col. 9, line 55-Col. 10, line 33), and

wherein a time macro movement amount is set as the movement amount of said audience, said time macro movement amount being an average of the average movement amounts in a time direction thereof, i.e. the motion vectors have a magnitude and direction over the time period of a frame or several frames (Tow-Col. 9, line 55-Col. 10, line 33).

Regarding claim 5, Lu in view of Tow teaches when said movement amount is larger than a predetermined level, said estimation device estimates said audience state to be in any one of states of beating time with the hands and of clapping, i.e. using a motion information template that corresponds to clapping (Tow-Col. 10, line 46-Col. 11, line 3).

Regarding claims 29, 30, 55-58, claims are analyzed with respect to claim 1. These are Markush claims that include estimating the audience state based on audio taken from the audience, data of which was assigned to the non-elected Group II of the Restriction/Election Requirement, and likewise all limitations dealing with audio will not be examined.

Regarding claim 31, claim is analyzed with respect to claim 1.

Regarding claim 32, claim is analyzed with respect to claim 2.

Regarding claim 33, claim is analyzed with respect to claim 4.

Regarding claim 34, claim is analyzed with respect to claim 5.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Tow and further in view of Toyama (US 6,792,135).

Regarding claim 3, Lu in view of Tow teaches all elements of claims 1 and 2.

Lu in view of Tow teaches when an area identified based on color information is divided into blocks, the movement vector is determined for each of the blocks (Tow-Fig. 2, el. 201, 203, 205, 207, 209; Col. 8, lines 14-65).

Lu in view of Tow does not clearly teach identifying an area based on color information.

Toyama teaches identifying an area based on color information (Col. 7, lines 1-24).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lu in view of Tow to include

identifying an area based on color information, as taught by Toyama, for the purpose of identifying and tracking an object in a video.

7. Claims 6-10 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Tow and further in view of Tagawa (US 7,373,209).

Regarding claim 6, Lu teaches an audience state estimation system (Fig. 1, 3) comprising:

imaging device for imaging an audience and generating a video signal relative to the audience thus imaged (Col. 8, line 54-Col. 9, line 31).

Lu does not clearly teach a movement periodicity detection device for detecting movement periodicity of said audience based on said video signal; and estimation device for estimating an audience state based on the movement periodicity of said audience.

Tow teaches using MPEG differential frames that store motion information in the form of motion vectors obtained by determining the difference between adjacent frames (Col. 6, lines 47-60; Col. 8, lines 14-65); and

the motion vectors have a magnitude and direction over the time period of a frame or several frames (Col. 9, line 55-Col. 10, line 33); and

estimation device for estimating an audience state based on a comparison result of the movement periodicity of said audience and a predetermined reference level, i.e. using a motion information template that corresponds to clapping (Col. 10, line 46-Col. 11, line 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lu to include determining motion vectors; and wherein an average movement amount showing an average of magnitudes of the movement vectors is set as the movement amount of said audience, as taught by Tow, for the purpose of identifying a type of motion energy at a particular place in a video and presenting it to a viewer in a graphically intuitive manner (Tow-Col. 3, lines 29-35).

Lu in view of Tow does not clearly teach a movement periodicity detection device for detecting movement periodicity of said audience based on said video signal.

Tagawa teaches detecting periodicity based on an audio signal, i.e. identifying a periodicity of a rhythm or beat in music based on the peaks of an auto-correlation function of the audio (Col. 13, lines 5-49).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lu in view of Tow to include a movement periodicity detection device for detecting movement periodicity of said audience based on said video signal, using the technique taught by Tagawa in combination with the motion vector system taught by Lu in view of Tow, although in different fields of endeavor would provide a predictable variation to the motion vector system and for the purpose of specifically identifying a type of motion for use in a video retrieval system.

Regarding claim 7, Lu in view of Tow in view of Tagawa teaches the movement periodicity detection device determines movement vectors of the imaged audience based on said video signal (Tow-Col. 6, lines 47-60; Col. 8, lines 14-65; Tagawa-Col. 13, lines 5-49),

calculates an average movement amount showing an average of magnitudes of the movement vectors (Tow-Col. 9, line 55-Col. 10, line 33), and

detects an autocorrelation maximum position of the average movement amount (Tow-Col. 10, line 57-Col. 11, line 3; Tagawa-Col. 13, lines 5-49), and

wherein variance of the autocorrelation maximum position is set as said movement periodicity (Tagawa-Col. 13, lines 5-49).

Regarding claim 8, Lu in view of Tow in view of Tagawa teaches the variance is calculated using a signal in a frame range, said frame range being decided on the basis of the periodicity of said audience state to be estimated (Tow-Col. 9, lines 37-55; Col. 10, lines 45-67; Tagawa-Col. 13, lines 5-49).

Regarding claim 9, Lu in view of Tow in view of Tagawa teaches the movement periodicity detection device determines movement vectors of the imaged audience based on said video signal (Tow-Col. 6, lines 47-60; Col. 8, lines 14-65), and

calculates an average movement amount showing an average of magnitudes of the movement vectors (Tow-Col. 9, line 55-Col. 10, line 33), and

wherein a ratio of low-frequency component in the average movement amount is set as said movement periodicity (Lu-Col. 11, line 48-Col. 12, line 13; Tow-Col. 9, line 55-Col. 10, line 33; Tagawa-Col. 13, lines 5-49). Note: The image is low-pass filtered and the movement periodicity is determined to be the ratio of average magnitudes of the motion vectors distributed over time, such as for clapping.

Regarding claim 10, Lu in view of Tow in view of Tagawa teaches a frequency range of the low-frequency component is decided according to the periodicity of the said average movement amount transformed to a frequency region to be detected, i.e. identifying the rate and rhythm of clapping (Lu-Col. 11, line 48-Col. 12, line 13; Tow-Col. 9, line 55-Col. 10, line 33; Tagawa-Col. 13, lines 5-49).

Regarding claim 35, claim is analyzed with respect to claim 6.

Regarding claim 36, claim is analyzed with respect to claim 7.

Regarding claim 37, claim is analyzed with respect to claim 9.

8. Claims 11 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Tow in view of Tagawa and further in view of Stevens (WO 91/03912).

Regarding claim 11, Lu in view of Tow in view of Tagawa teaches all elements of claim 6.

Lu in view of Tow in view of Tagawa teaches determining the periodicity, rate, and rhythm of a set of motion vectors (Tow-Col. 10, line 46-Col. 11, line 3; Tagawa-Col. 13, lines 5-49).

Lu in view of Tow in view of Tagawa does not clearly teach the estimation device estimates said audience state to be in a state of beating time with the hands when said movement periodicity is larger than a predetermined level, and estimates said audience state to be in a state of clapping when said movement periodicity is not larger than said predetermined level.

Stevens teaches estimating a person to be in a state of beating time with the hands when said movement periodicity is larger than a predetermined level, and estimates a person to be in a state of clapping when said movement periodicity is not larger than said predetermined level, i.e. when a first loud or sharp sound is received a counter is started; when the counter reaches a predetermined level without the system receiving another loud or sharp sound, the system determines that the periodicity of the first and a future second sound would be too large to be clapping; when a second loud or sharp sound is received before the counter reaches the predetermined level, the system

determines that the periodicity of the two sounds is within a sufficient range to be clapping (Abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lu in view of Tow in view of Tagawa to include the estimation device estimates said audience state to be in a state of beating time with the hands when said movement periodicity is larger than a predetermined level, and estimates said audience state to be in a state of clapping when said movement periodicity is not larger than said predetermined level, using the technique taught by Stevens in combination with the motion vector system taught by Lu in view of Tow in view of Tagawa, although in different fields of endeavor would provide a predictable variation to the motion vector system and for the purpose of specifically identifying a type of motion for use in a video retrieval system.

Regarding claim 38, claim is analyzed with respect to claim 11.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEREMY DUFFIELD whose telephone number is (571)270-1643. The examiner can normally be reached on Mon.-Thurs. 8:00 A.M.-5:30 P.M. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Beliveau can be reached on (571) 272-7343. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

11 December 2008
JSD

/Scott Beliveau/
Supervisory Patent Examiner, Art Unit 2427